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APR 17 2002

OFFICE OF PETITIONS

In re Application of :
Ludwig, et al. :
Application No. 09/927,920 : DECISION REFUSING STATUS
Filed: August 10, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 1017-015US01 :
Title: PRODUCT IDENTITY :
PRESERVATION AND TRACING :

This is in response to paper titled "Affidavit", filed January 16, 2002 (Certificate of Mailing dated December 28, 2001), which is being treated as a petition under 37 CFR 1.47(a).

The petition under 37 CFR 1.47(a) is **DISMISSED**.

Rule 47 applicant is given **TWO MONTHS** from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the nonsigning inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on August 10, 2001, without an executed oath or declaration. Accordingly, on September 28, 2001, the Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application. This Notice set a two month period for reply.

In reply, applicant filed the instant reply and paid the surcharge for late filing of the declaration. To make timely this reply, applicant purchased a one month extension of time. Rule 47 applicant's reply consisted of an affidavit by Peter M. Reyes, Jr., attorney for Cargill, Inc. In the affidavit, attorney Reyes detailed how on two occasions an Assignment and Declaration/Power of Attorney were forwarded to inventor Nelson for his signature. In addition, the affidavit stated that Mr. Nelson has to date not returned the forms.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached after diligent effort or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 37 CFR 1.63; (3) the petition fee;

and (4) a statement of the last known address of the non-signing inventor. Rule 47 applicant has not met requirement (1) above.

As to requirement (1), applicant has not demonstrated that a copy of the entire application papers (specification, including claims and drawings) were sent for the nonsigning inventors' review. The affidavit only states that a copy of the declaration and assignment papers were forwarded for signature. Requiring that an inventor be presented with the application papers before a petition under 37 CFR 1.47 is granted "ensures that the inventor is apprised of the application to which the oath or declaration is directed."¹

As applicant did not submit the required \$130 fee for a petition under 37 CFR 1.47(a), the fee has been charged to Deposit Account No. 50-1778, as authorized.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries regarding this decision should be directed to Petitions Attorney Cliff Congo at (703) 305-0272.


Beverly M. Flanagan
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for Patent Examination Policy